

No. 16274

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

AUTHORIZED SUPPLY COMPANY OF ARIZONA, a Corporation,
Appellant,

vs.

SWIFT & COMPANY, a Corporation, ARIZONA YORK REFRIGERATION COMPANY, a Corporation, and SOUTHERN ARIZONA YORK REFRIGERATION COMPANY, a Corporation,
Appellees,

ARIZONA YORK REFRIGERATION COMPANY, a Corporation, and SOUTHERN ARIZONA YORK REFRIGERATION COMPANY, a Corporation,

Appellants,

vs.

SWIFT & COMPANY, a Corporation,

Appellee.

BRIEF OF APPELLEES ARIZONA YORK REFRIGERATION COMPANY, A CORPORATION, AND SOUTHERN ARIZONA YORK REFRIGERATION COMPANY, A CORPORATION.

DARNELL, HOLESAPPLE,
McFALL & SPAID,
410 Valley National Bldg.,
Tucson, Arizona,

Attorneys for Appellees Arizona York Refrigeration Company and Southern Arizona York Refrigeration Company

FILED

APR 23 1959

PAUL P. O'BRIEN, CLERK

INDEX

	Page
Statement of Appellees Arizona York Refrigeration Company and Southern Arizona York Refrigeration Company's position	1

TABLE OF CASES AND AUTHORITIES

	Page
Arizona Revised Statutes Sec. 44-269	2

No. 16274

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

AUTHORIZED SUPPLY COMPANY OF ARIZONA, a Corporation,
Appellant.

vs.

SWIFT & COMPANY, a Corporation, ARIZONA YORK REFRIGERATION COMPANY, a Corporation, and SOUTHERN ARIZONA YORK REFRIGERATION COMPANY, a Corporation,
Appellees,

ARIZONA YORK REFRIGERATION COMPANY, a Corporation, and SOUTHERN ARIZONA YORK REFRIGERATION COMPANY, a Corporation,

Appellants,

vs.

SWIFT & COMPANY, a Corporation,

Appellee.

BRIEF OF APPELLEES ARIZONA YORK REFRIGERATION COMPANY, A CORPORATION, AND SOUTHERN ARIZONA YORK REFRIGERATION COMPANY, A CORPORATION

STATEMENT OF APPELLEES ARIZONA YORK REFRIGERATION COMPANY a n d SOUTHERN ARIZONA YORK REFRIGERATION COMPANY'S POSITION.

It would be considerably less than candid of defendants York, having taken the position in their Opening Brief that Swift and Company had elected the remedy of rescission, thereby barring its claim for damages, to argue the contrary of that position to the Court in York's response to Authorized Supply Company's Opening Brief. Defendants York cannot properly take both sides of the argument and urge each with equal vigor.

By the nature of the judgments entered by the trial court (T.R. 36), defendants York are "in the middle" as it were, between Authorized Supply Company and Swift and Company. It is consistent with both law and justice that if Swift and Company is entitled to recover from the York companies, they, or rather Southern Arizona York Refrigeration Company, are entitled to recover over against Authorized Supply Company, as the claims of both Swift and Company and the York Companies are equally based on the fact of a "sale" of the same defective Bush coils. Contrariwise, if the Court should determine that the trial court erred in concluding that Southern Arizona York Refrigeration Company's return of the coils to Authorized Supply Company did not effectuate a rescission, barring a right to recover damages, it follows that a reversal of the judgment in favor of Swift and Company and against the York Companies should also be ordered.

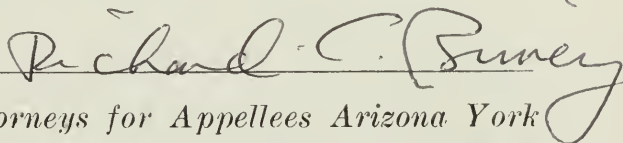
It is submitted that the positions of all of the parties to the action and these appeals will be fully

presented to the Court at such time as the brief of Appellee Swift and Company is filed, and the Court will then be in a position to properly determine the issues raised by the joint appeals. The Swift and Company brief will undoubtedly point out the authorities in support of its contention that the language of Arizona Revised Statutes, Sec. 44-269, does not bar a buyer from the right to sue for damages for breach of a warranty of fitness. By equal force, Swift and Company's argument, and the authorities cited in support of it, apply to the position taken by Authorized Supply Company in defense of the Third-Party Complaint.

Respectfully submitted,

DARNELL, HOLESAPPLE,

McFALL & SPAID,

By 
*Attorneys for Appellees Arizona York
Refrigeration Company and Southern
Arizona York Refrigeration Company.*

410 Valley National Bldg.,

Tucson, Arizona.

Three copies of the within Brief of Appellees Arizona York Refrigeration Company, a corporation, and Southern Arizona York Refrigeration Company, a corporation, were served this 22nd day of April, 1959, on:

MAY, LESHER & DEES
706 Arizona Land Title Bldg.
Tucson, Arizona

Attorneys for Authorized Supply Company

AND

BOYLE BILBY, THOMPSON & SHOENHAIR
907 Valley National Bldg.
Tucson Arizona
Attorneys for Swift and Company

Richard C. Binney